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Proposed Attorneys for Home Loan Center, Inc.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re:

HOME LOAN CENTER, INC.,

Debtor.

Case No.: 19-51455 (MEH)

Chapter 11

**DEBTOR'S MOTION TO CONVERT CASE
UNDER 11 U.S.C. § 1112(a)**

**TO THE HONORABLE M. ELAINE HAMMOND, UNITED STATES BANKRUPTCY
JUDGE:**

Debtor, Home Loan Center, Inc. ("HLC" or the "Debtor"), debtor and debtor in possession in the above-captioned chapter bankruptcy case (the "Case") hereby moves ("Motion") this Court for an order converting the Case to a case under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") pursuant section 1112(a) of Bankruptcy Code and Rules 1017(f)(2) and 9013 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

In support of the Motion, the Debtor respectfully submits as follows:

I.

JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory predicate for the relief sought herein is Bankruptcy Code section 1112(a). The procedural rules applicable to this request for relief are set forth in Bankruptcy Rules 1017(f) and 9013.

II.

BACKGROUND

The Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code on July 21, 2019, thereby commencing the Case. The Debtor has continued in possession of its property and continued to manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee of unsecured creditors, trustee or examiner has been appointed in the Case.

The factual background regarding the Debtor, including its current and historical business operations and the events precipitating the commencement of its chapter 11 case, is set forth in detail in the *Declaration of Matthew English In Support of the Debtors Motion For Relief From the Automatic Stay Under 11 U.S.C. § 362 to Prosecute Appeal of Adverse Judgment* [Docket No. 19].

The Case has not been previously converted.

On August 29, 2019, the Debtor filed a *Notice of Conversion of Chapter 11 Case to Chapter 7* [Docket No. 77], thereby advising the Court and parties in interest of its intent to convert the Case.

III.

BASIS FOR RELIEF

Section 1112(a) of the Bankruptcy Code governs the voluntary conversion from chapter 11 to chapter 7. Section 1112(a) provides that a debtor may convert a chapter 11 case to a case under chapter 7 at any time as a matter of right. Specifically, section 1112(a) states:

1 The debtor may convert a case under this chapter to one under chapter 7 of
2 this title unless —

- 3 (1) the debtor is not a debtor in possession;
4 (2) the case originally was commenced as an involuntary case under
5 this chapter; or
6 (3) the case was converted to a case under this chapter other than on
7 the debtor's request.

8 11 U.S.C. § 1112(a).

9 Section 1112(a), therefore, gives a chapter 11 debtor the right to convert to chapter 7 unless
10 one of the enumerated exceptions in section 1112(a)(1) - (3) is applicable. *See, e.g., In re Dieckhaus*
11 *Stationers of King of Prussia, Inc.*, 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (stating that section
12 1112(a) “gives a debtor in possession an absolute right to convert, unless the case is governed by one
13 of the enumerated exceptions”); *Abbott v. Blackwelder Furniture Co.*, 33 B.R. 399, 401 (W.D.N.C.
14 1983) (“Congress provided the Chapter 11 debtor with the absolute right to accomplish voluntary
15 conversion to a Chapter 7 liquidation without Court approval.”); *see also* Fed. R. Bankr. P.
16 1017(f)(1) and 1017(f)(2) (conversion under section 1112(a) is requested by motion under Rule 9013
17 but is not to be treated as a contested matter under Rule 9014).

18 In this Case, none of the enumerated exceptions to Bankruptcy Code section 1112(a) apply:
19 (1) the Debtor is a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code;
20 (2) this Case was commenced by the filing of a voluntary chapter 11 petition; and (3) this Case was
21 not previously converted to chapter 11 from another chapter of the Bankruptcy Code. Thus, the
22 Debtor is entitled, as a matter of right, to convert the Case to one under chapter 7 of the Bankruptcy
23 Code.

24 IV.

25 NOTICE

26 A copy of this Motion has been given to the following parties or, in lieu thereof, to their
27 counsel, if known: (i) the Office of the United States Trustee; (ii) the creditors holding the largest
28 unsecured claims; and (iii) those persons who have requested notice pursuant to Bankruptcy Rule
2002. The Debtors submits that, in light of the nature of the relief requested, no other or further
notice need be given.

V.

NO PRIOR REQUEST

No prior motion for the relief requested herein has been made to this or any other Court.

VI.

CONCLUSION

WHEREFORE, the Debtor prays that this Court issue an order converting this Case from one under chapter 11 to a case under chapter 7.

Dated: September 5, 2019

By: /s/ Malhar S. Pagay

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